In the High Court of Punjab and Haryana at Chandigarh

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C.W.P. No.7619 of 2004

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Date of decision:18.1.2007

Sukhvinder Singh

.....Petitioner

v.

State of Punjab and others

.....Respondents

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Coram: Hon'ble Mr. Justice S.S. Nijjar
Hon'ble Mr. Justice S.S. Saron

Present: Mr. T.P. Singh, Advocate for the petitioner.

Mrs. Charu Tuli, Senior Deputy Advocate General, Punjab for respondent No.1.

Mr. J.S. Toor, Senior Advocate with Ms. R. Singla and Mr. Umesh Vashisht, Advocates for respondent No.2.

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S.S. Nijjar, J. (Oral):

The petitioner has been working in the Market Committee, Phagwara as an Electrician since 1.4.1987. The State Government enacted Punjab Market Committee Class-III Service Rules, 1989 which came into force on 27.1.1989. In these rules there was no provision for the post of Electrician along with many other posts. To accommodate such employees who have been left out in the Service Rules, the Punjab Mandi Board (hereinafter referred to as `the Board') issued circular No.276 on 8.12.1992.

Under this circular it was directed that all the employees of the Market Committees like Kandaman, Record Keeper, Store Keeper, Caretaker, Restorer, Moharar, Kanda Moharar, Rest House Attendant, Kanda Munasi and others who were recruited after 3.7.1980 shall be merged into the cadre of Clerks. The petitioner was recruited as an Electrician on 1.4.1987. The petitioner claims to be covered under the category "and others" employees who were directed to be merged with the cadre of Clerks. The petitioner requested that he may be merged in the cadre of Clerk on number of occasions but his claim has not been accepted. This claim was considered by the Market Committee, Phagwara in its meeting held on 28.5.2001. It was unanimously decided that the petitioner and one other person who were working as a Chowkidar be promoted as Clerks from 1.6.2001. It was further directed that these employees will be paid the scale of Clerk on passing Punjabi Type test. This resolution was sent by the Market Committee, Phagwara to the Secretary, Punjab Mandi Board for approval. The Board by its order dated 9.4.2002 has rejected the recommendations made by the Market Committee, Phagwara on the ground that there is no provision to appoint an Electrician as a Clerk by transfer. The petitioner filed a revision petition before respondent No.1 which has been dismissed by order 20.10.2003 (Annexure-P.11). Aggrieved by the aforesaid orders the petitioner has filed the present writ petition under Articles 226/227 of the Constitution of India. He seeks the issuance of a writ in the nature of certiorari for quashing the order dated 9.4.2002 (Annexure-P.10) and dated 20.10.2003 (Annexure-P.11). The petitioner also seeks the issuance of a writ in the nature of mandamus directing the respondents to grant approval

to the resolution dated 28.5.2001 (Annexure-P.3) passed by the Market Committee.

The respondents have filed a written statement and the petitioner has filed a replication thereto.

We have heard learned counsel for the parties at length and perused the record.

We are of the opinion that the claim made by the petitioner cannot be rejected in view of the same benefits having been given to Daljinder Singh, Mit Ram and Joginder Singh. These three employees were working initially on the posts of Mechanical Unit Operators. They were subsequently absorbed on the posts of Clerks on the abolition of the posts in the Market Committees in which they were working. They have been appointed as Clerks in view of the circular issued by the Punjab Mandi Board on 8.12.1992 (Annexure-P.1).

Mr. Toor, however, argues that Annexure-P.1 would not be applicable to the petitioner as the post of Electrician is not mentioned therein. Even otherwise he does not possess the necessary qualifications. In support of the submission, learned counsel has relied on Rule 8(2) of the Punjab Market Committee Class-III Rules, 1989 which provides that no person shall be appointed to a post in service unless he possesses the qualifications and experience as specified against that post in Appendix-`B'. Appendix-`B' of the Rules provides that the post of the Clerk shall be filled either by direct recruitment or by promotion from class-IV employees. For direct recruitment the necessary qualification is that a candidate should have passed Matriculation examination in Second Division or 10+2 examination

from the Education Board. He is also required to pass a type test in Punjabi language at a speed of 30 words per minute. For promotion from Class-IV the qualification is that the candidate must have an experience of working as such for a minimum period of five years and must have passed Matriculation examination. The promotee candidate is also required to pass the type-writing test in Punjabi language at a speed of 30 words per minute. Mr. Toor submits that the petitioner has not passed type-writing test in Punjabi language and, therefore, he cannot be permanently absorbed in the cadre of Clerks. Even otherwise the petitioner is claiming a post which is actually meant for the direct recruitment.

Mr. T.P. Singh, however, submits that the petitioner has been working on the post of Clerk since 28.5.2001. He further points out that in this very Market Committee the respondents have promoted Rajinder Pal and Mohan Singh on the posts of Clerks without considering the claim of the petitioner. These two individuals have been adjusted against the posts which are meant for direct recruitment. Therefore, under any circumstances the action of the respondents in ignoring the petitioner is clearly arbitrary and violates the mandate of Articles 14 and 16(1) of the Constitution of India.

We have considered the submissions made by the learned counsel for the parties. We are of the considered opinion that the claim of the petitioner has been arbitrarily rejected even though persons similarly situated as the petitioner have been absorbed on the permanent cadre of Clerks. The petitioner would be entitled to the same treatment. Merely because the post of Electrician is not mentioned in Annexure-P.1 would not

disentitle the petitioner from similar treatment. In fact a perusal of the replication clearly shows that Daljinder Singh, Mit Ram and Joginder Singh were all appointed as Mechanical Unit Operators in their respective Market Committees. These posts are also not mentioned in Annexure-P.1. If an expansion in the category can be made in the cases of these three individuals, we see no reason as to why the petitioner should be treated any differently. For this view of ours, we find support from the observations of the Supreme Court in the case of E.P. Royappa v. State of Tamil Nadu and another, AIR 1974 SC 555, wherein in paragraph 85 it has been observed as follows:-

> "In other words, Art. 14 is the genus while Art. 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one

> belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16."

In view of the above, the petitioner is entitled to be absorbed on permanent basis on the post of Clerk from the date he has been working on the said post which is 28.5.2001. The petitioner, however, is still required to pass a type test in Punjabi language as it is an essential qualification. We grant the petitioner six months time from today for passing the necessary

type test in Punjabi. The Board is also directed to hold the requisite type test to enable the petitioner to pass the test. He should also be given maximum number of chances which are given to every other employees for passing the Punjabi type test. We are constrained to make the aforesaid observation as the Board has failed to conduct the type test for the past number of years.

In view of the above, the petition is allowed. The petitioner is held entitled to be absorbed in the permanent cadre of Clerks from the date he has been working on the said post. He shall be granted all consequential benefits such as seniority, increments etc. In case the petitioner fails to pass the type test in Punjabi language within the stipulated period, the necessary consequence shall flow.

Petition allowed. No costs.

(S.S. Nijjar)
Judge

January 18, 2007. **(S.S. Saron)**
Judge

hsp

Whether fit for indexing: Yes